

336. The device of claim 330 wherein the liquid is flavored with a flavor selected from the group of vanilla, honey, berry, chocolate, peach, champagne, cognac and menthol.

337. The device of claim 330 wherein the liquid includes a humectant.

338. The device of claim 329 wherein the additive includes botanical extract material.--

REMARKS

The claims have been amended. For convenience in prosecution, all claims are repeated herein, even those which are not amended herein. Two sets of claims are included, one set showing the changes made in this response (attached) and one clean set (set out above). No new matter has been added to the application.

This is in response to the office action dated August 27, 2002. Claims 276-280, 288, 299-303 and 306-338 are pending in the application.

The Examiner rejected claims 276-278, 288 and 306-338 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 6,357,448 in view of Eilerman et al (U.S. Patent No. 5,147,463). That rejection is contained in paragraph 2 at page 2-3 of the office action.

Claims 279-280 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 6,357,448 in view of claims 1-4 of U.S. Pat. No. 6,321,755. That rejection is contained in paragraph 3 of the office action on page 3.

Claims 299-303 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Pat. No. 6,321,755 in view of claims 1-23 of U.S. Pat. No. 6,357,448. That rejection is contained in paragraph 4 of the office action at page 4.

Claims 276-280, 288, 299-303, and 306-338 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of copending Application No. 10/090,392 in view of Eilerman et al (U.S. Pat. No. 5,147,463). That rejection is contained in paragraph 5 on pages 4 and 5 of the office action.

Claims 276-280 were rejected under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. That rejection is contained in paragraph 7 of the office action on page 6.

With respect to the claim rejection under 35 U.S.C. § 112, claims 276-280 have been amended to state that a tobacco product is being claimed. The Examiner correctly notes that the tobacco product of claims 276-280 includes a shell and a wrapper.

Applicant is filing herewith terminal disclaimers in compliance with 37 C.F.R. Section 1.321(c) to overcome the actual and provisional rejections under the judicially created doctrine of obviousness-type double patenting.

The Examiner is requested to consider the three Sinclair Declarations under Rule 132 in the record. Specifically, it was pointed out in the Declarations that applicant's product with a structure as shown in the some of the drawings of the present application was on sale more than a year before the filing date of the present CIP application, but that product was not scented with a liquid additive. Thus, applicant's prior product as shown in his first two patents is prior art under 35 U.S.C. Section 102(b) to any claims in the present application which are not fully supported by the patent application on which Applicant's first patent issued. However, the invention sought to be patented is believed nonobvious and patentable because of the dual purpose of the liquid additive, as a flavoring and to inhibit breaking of the tube when the tube is

unrolled by a customer.

Each of the independent claims now states that the liquid additive provides an elevated moisture content that inhibits breaking of the shell or tube.

Based upon the above amendments and comments, and the filing of the above discussed terminal disclaimers, reconsideration and a notice of allowance are respectfully requested.

Applicant respectfully submits that the application is in condition for allowance. A Notice of Allowance is hereby respectfully requested.

Should the Examiner feel that a telephone conference would advance the prosecution of this application, she is encouraged to contact the undersigned at the telephone number listed below.

Applicant respectfully petitions the Commissioner for any extension of time necessary to render this paper timely.

Please charge the \$165 fee for filing 3 terminal disclaimers, and any fees due or credit any overpayment, to Deposit Account No. 50-0694.

Respectfully submitted,



Charles C. Garvey, Jr., Reg. No. 27,889
Seth M. Nehrbass, Reg. No. 31,281
Gregory C. Smith, Reg. No. 29,441
Stephen R. Doody, Reg. No. 29,062
Brett A. North, Reg. No. 42,040
GARVEY, SMITH, NEHRBASS & DOODY, L.L.C.
PTO Customer No. 22920
3838 N. Causeway Blvd., Suite 3290
Metairie, LA 70002
Tel.: (504) 835-2000
Fax: 504-835-2070

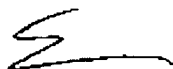
e-mail: IPLNO@AOL.COM
www.neworleanspatents.com

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper (22 pages total) is being facsimile transmitted to the Commissioner of Patents and Trademarks at 703-872-9795 on the date shown below.

Seth M. Nchrbass, Reg. No. 31,281

Type or Print Name of Person Signing Certificate



Signature



Date

P:\Seth\98541.2P2.response.wpd

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Daniel S. Sinclair, Jr.

DATE: November 27, 2002

SERIAL NO: 10/083,671

GROUP ART UNIT: 1731

FILED: 26 February 2002

EXAMINER: Dionne Walls

FOR: "TOBACCO PRODUCT"

Attorney Docket No. P01266US (98541.2P2)

Copy of Amendments Showing Changes

The application has been amended in the foregoing amendment to read as follows (added matter is underlined and omitted matter is in brackets):

IN THE CLAIMS:

Please amend the claims to read as follows (added matter is underlined and omitted matter is in brackets):

-- 276. (twice amended) A tobacco [shell] product, comprising:

(a) a sheet of tobacco-containing material that is flavored with [an] a liquid additive that provides an elevated moisture content to the sheet of material;

(b) a longitudinal bore defined when the sheet is formed into a hollow tube;

(c) the longitudinal bore being not completely filled with a tobacco filler product; and

(d) a package of such dimensions to maintain the sheet in the formed hollow tube configuration until [the sheet and tube are] removed from the package to thereby enable a consumer to unroll the hollow tube and after removal from the package and then fill the bore with the user's selected tobacco material;

and

- (e) wherein said elevated moisture content inhibits breaking of the tube when the tube is unrolled by a consumer.

277. (twice amended) The tobacco product [shell] of claim 276, wherein the bore is completely unfilled.

278. (amended) The tobacco product [shell] of claim 276, wherein the package has an opening between opposing walls which prevents the sheet from unrolling until removed from the package to insert tobacco fill material into the tube.

279. (twice amended) A tobacco [shell] product, comprising:

(a) a sheet of tobacco-containing material that is flavored with [an] a liquid additive that provides an elevated moisture content to the sheet of material;

(b) a tube for receiving the sheet of material there around;

(c) a longitudinal bore formed in the material when the sheet is wrapped around the tube; and

(d) a package of such dimensions for receiving the wrapped sheet of material wherein the package maintains the sheet in the wrapped configuration until the sheet and tube are removed from the package to be filled with a tobacco fill material.

280. (twice amended) A tobacco [fabricated cigar] product, comprising:

(a) a shell of material containing in part tobacco and that is flavored with [an] a liquid additive that provides an elevated moisture content to the sheet of material;

(b) a tube for wrapping the shell of material there around to define a cigar shape; and

(c) a wrapper[, of such dimensions,] for receiving and packaging the cigar shaped shell, [and upon removal of the tube, walls of] the wrapper maintaining the shell in the cigar shape until the tube is

removed from the package, [and]enabling a user unroll the shell and to fill the shell with tobacco; and

(d) wherein said elevated moisture content inhibits breaking of the tube when the tube is unrolled.--

-- 288. (twice amended) A shell for assembling custom-made rolls of tobacco for smoking, comprising:

(a) a sheet of combustible material which has not been part of a previously assembled cigar or cigarette, and that has been flavored with [an] a liquid additive that provides an elevated moisture content to the sheet of material;

(b) said sheet of material having at least two edges and a surface area located between said edges;

(c) said area having an inner surface and an outer surface;

(d) wherein the sheet has a tubular shape at rest; [and]

(e) said edges being separable to provide access to the inner surface of the sheet of material for depositing thereon tobacco products to be smoked in the shell; and

(f) wherein said elevated moisture content inhibits breaking of the tube when the tube is unrolled.--

-- 299. A device for preparing a tobacco product, comprising:

a hollow shell having a central opening longitudinally therethrough, said shell being formed from homogenized tobacco paper, the shell having a longitudinal slit in a sidewall of the shell to allow placing of crushed tobacco into said central opening, wherein the shell is formed by wrapping the homogenized tobacco paper about a removable form casing; and wherein said shell is wrapped about a removable form casing, said form casing having an outside diameter, which is slightly smaller than the diameter of the central

opening.

300. The device of claim 299, wherein said form casing is provided with a non-stick coating deposited on an outer surface of the form casing.

301. (amended) A device for preparing a tobacco product, comprising:

(a) a removable substantially cylindrical form casing; [and]

(b) a shell body of homogenized tobacco material having a central opening extending longitudinally therethrough, said shell body being wrapped about said form casing[, said shell body comprising homogenized tobacco paper, the shell body having]

(c) a longitudinal opening [slit] formed in a sidewall of the shell body to allow placing of crushed tobacco into said central [opening] after the form casing is removed from the shell body[.];

(d) wherein the shell is formed by wrapping the homogenized tobacco paper about the removable form casing; and

(e) wherein said elevated moisture content inhibits breaking of the tube when the tube is unrolled.

302. The device of claim 301, wherein said central opening is adapted for receiving crushed tobacco after said form casing has been removed.

303. (Amended) The invention of claim 301, wherein there are multiple layers of homogenized tobacco paper.--

-- 306. (Amended) A product including a cigar tube for holding an end user's tobacco fill material, comprising:

a) a cigar tube which comprises a sheet of material of tobacco leaves or homogenized tobacco

paper flavored with [an] a liquid additive that provides an elevated moisture content to the sheet of material, the sheet of material being rolled into a shaped tube that has a longitudinal bore, and edges that can be moved apart by the end user so that tobacco fill material can be added to the bore; [and]

b) a wrapper, wherein the cigar tube is packaged in the wrapper, and the cigar tube remains rolled in said tube shape inside the wrapper, and the packaged cigar tube is not filled with tobacco to form a complete cigar; and

(c) wherein said elevated moisture content inhibits breaking of the shaped tube when the edges are moved apart by the end user.

307. The product of claim 306 further comprising moisture in the sheet of material.

308. The product of claim 306 wherein the sheet is entirely comprised of tobacco material.

309. The product of claim 306 wherein the wrapper is of cellophane material.

310. The product of claim 306 wherein the wrapper is of a clear material.

311. The product of claim 306 wherein the wrapped, shaped tube does not contain any tobacco fill material.

312. The product of claim 306 wherein the tube is not formed by removing the combustible filler of an existing prefabricated cigar.

313. The product of claim 306 wherein multiple layers define the sheet of material.

314. (amended) A product including a cigar tube for holding an end user's tobacco fill material, comprising:

a) a cigar tube which comprises a sheet of material of tobacco leaves or homogenized tobacco paper flavored with [an] a liquid additive that provides an elevated moisture content to the sheet of material,

the sheet of material being rolled into a shaped tube that has a longitudinal bore, and edges that can be moved apart by the end user so that tobacco fill material can be added to the bore; [and]

b) a wrapper, wherein the cigar tube is packaged in the wrapper, and the cigar tube remains rolled in said tube shape inside the wrapper after packaging; and

(c) wherein said elevated moisture content inhibits breaking of the shaped tube when the edges are moved apart by the end user.

315. The product of claim 314 further comprising moisture in the sheet of material.

316. The product of claim 314 wherein the sheet is entirely comprised of tobacco material.

317. The product of claim 314 wherein the wrapper is of cellophane material.

318. The product of claim 314 wherein the wrapper is of a clear material.

319. The product of claim 314 wherein the wrapped, shaped tube does not contain any tobacco fill material.

320. The product of claim 314 wherein the tube is not formed by removing the combustible filler of an existing prefabricated cigar.

321. (Amended) A product including a cigar tube for holding an end user's tobacco fill material, comprising:

a) a cigar tube which comprises a sheet of material of tobacco leaves or homogenized tobacco paper that are flavored with [an] a liquid additive that provides an elevated moisture content o the sheet of material, the sheet of material being rolled into a shaped tube that has a longitudinal bore, and edges that can be moved apart by the end user so that tobacco fill material can be added to the bore; [and]

b) a wrapper, wherein the cigar tube is packaged in the wrapper, the wrapper has a clear portion for

enabling a consumer to see the cigar tube, and the cigar tube remains rolled in said tube shape inside the wrapper; and

(c) wherein said elevated moisture content inhibits breaking of the shaped tube when the edges are moved apart by the end user.

322. The product of claim 321 further comprising moisture in the sheet of material.

323. The product of claim 321 wherein the sheet is entirely comprised of tobacco material.

324. The product of claim 321 wherein the wrapper is of cellophane material.

325. The product of claim 321 wherein the wrapper is of a clear material.

326. The product of claim 321 wherein the wrapped, shaped tube does not contain any tobacco fill material.

327. The product of claim 321 wherein the tube is not formed by removing the combustible filler of an existing prefabricated cigar.

328. The product of claim 321 wherein multiple layers define the sheet of material.

329. The device of claim 301 wherein the shell body is flavored with an additive.

330. The device of claim 301 wherein the additive is a liquid.

331. The device of claim 330 wherein the liquid includes a solvent.

332. The device of claim 330 wherein the liquid include in part, oil.

333. The device of claim 330 wherein the liquid include in part, propylene.

334. The device of claim 330 wherein the liquid include in part, glycerine.

335. The device of claim 330 wherein the liquid include in part, benzyl.

336. The device of claim 330 wherein the liquid is flavored with a flavor selected from the group

of vanilla, honey, berry, chocolate, peach, champagne, cognac and menthol.

337. The device of claim 330 wherein the liquid includes a humectant.

338. The device of claim 329 wherein the additive includes botanical extract material.--

P:\Seth\98541.2P2.response.wpd